

IN THE CHANCERY COURT FOR DAVIDSON COUNTY, TENNESSEE FOR THE TWENTIETH
JUDICIAL DISTRICT AT NASHVILLE

STATE OF TENNESSEE,
Petitioner,

v.

UPTONS, INC., a Delaware corporation,

Respondent

PETITION

Paul G. Summers, Attorney General and Reporter for the State of Tennessee, (hereinafter "Attorney General"), files this Petition pursuant to Tenn. Code Ann. § 47-18-107 of the Tennessee Consumer Protection Act of 1977 (hereinafter "the Act"), and would respectfully show the Court as follows:

1. The Attorney General, acting pursuant to the Act, has investigated certain acts and practices of Uptons, Inc. (hereinafter, "Respondent" or "Uptons"). Upon completion of such investigation, the Attorney General has determined that certain of Respondent's acts and practices, more specifically described in Paragraph 2 of this Petition, constitute unfair and deceptive acts or practices affecting the conduct of trade or commerce in the State of Tennessee in violation of Tenn. Code Ann. § 47-18-101 *et seq.* (the Tennessee Consumer Protection Act). More specifically, Respondent's conduct is violative of Tenn. Code Ann. §§ 47-18-104(a), (b)(5) (b)(12), (b)(27) and (b)(29).
2. Based upon the investigation of Respondent, the Attorney General alleges the following:
 - (A) Respondent is a Delaware corporation. Respondent has operated department stores in Nashville, Franklin, Jackson and Memphis, Tennessee.

(B) On July 21, 1999, Respondent announced to the press that its store locations in Tennessee would be going out of business.

(C) On August 25, 1999, the Attorney General's Office notified Uptons that going out of business sales may not be conducted for more than 90 days. In spite of that notice, Respondent continued to conduct the sales well beyond the 90 day limit as prescribed in Tenn. Code Ann. § 47-18-104(b)(29).

(D) Respondent's only store location that was required to obtain a liquidation sale permit pursuant to Tenn. Code Ann. § 6-55-401, *et seq.* was the Memphis store. That store obtained a permit on August 18, 1999. However, the going out of business sale was commenced prior to that date.

(E) All other store locations (*e.g.* Rivergate, Nolensville Road, Cool Springs and Jackson) were not subject to Tenn. Code Ann. § 6-55-401, *et seq.* and it conducted going out of business sales at those locations until December 13, 1999.

(F) For significantly more than 90 days, all Respondent's store locations advertised its going out of business stores in newspapers and via store signs.

(G) During its going out of business sales, Respondent also retroactively changed its refund policy. In particular, Respondent refused refunds to consumers who had been told they would receive a refund if they returned an item under the terms of Respondent's pre-going out of business refund policy.

(H) Respondent refused to provide refunds to consumers who purchased items during Respondent's going out of business sale even if goods were defective and even when the consumer was unable to inspect the goods for defects prior to the purchase of the goods.

(I) Respondent refused to let consumers use Uptons' credit card credits to purchase goods during its going out of business sales.

(J) Respondent's conduct constitutes unfair and deceptive acts or practices.

3. Respondent neither admits nor denies the allegations of Paragraph 2 (A-J).

4. The Attorney General entered into negotiations with Respondent and the parties have agreed to, and the Division has approved, the attached Assurance of Voluntary Compliance.

5. In accordance with the provisions of Tenn. Code Ann. § 47-18-107(c), the execution, delivery and filing of the Assurance does not constitute an admission of prior violation of the Act.

6. The Division, the Attorney General, and the Respondent, the parties who are primarily interested in the matters set forth in Paragraph 2 hereof, have jointly agreed to the Assurance of Voluntary Compliance and join in its filing.

PREMISES CONSIDERED, Petitioner prays

1. That this Petition be filed without cost bond pursuant to the provisions of Tenn. Code Ann. §§ 20-13-101 and 47-18-116.
2. That the Assurance of Voluntary Compliance be approved and filed in accordance with the provisions of the Tennessee Consumer Protection Act.